

**BOARD OF OPTOMETRY  
FULL BOARD MEETING  
MAY 9, 2012**

**TIME AND PLACE:** The Board of Optometry (Board) meeting was called to order at 11:00 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2<sup>nd</sup> Floor, Room 1, Henrico, Virginia.

**PRESIDING OFFICER:** Gregory P. Jellenek, O.D., Chair

**MEMBERS PRESENT:** Jonathan R. Noble, O.D.  
W. Ernest Schlabach, Jr., O.D.  
Angela Tsai, O.D.

**MEMBERS NOT PRESENT:** Shandon C. Phan, Esquire, Citizen Member

**STAFF PRESENT:** Leslie L. Knachel, Executive Director  
Charis Mitchell, Assistant Attorney General, Board Counsel  
Dianne Reynolds-Cane, M.D., Director  
Elaine Yeatts, Senior Policy Analyst  
Carol Stamey, Operations Manager  
Tamara Farmer, Administrative Assistant

**OTHERS PRESENT:** Ralston King, Virginia Society of Eye Physicians and Surgeons  
Bo Keeney, Virginia Optometric Association (VOA)

**QUORUM:** With four members of the Board present, a quorum was established.

**ORDERING OF AGENDA** Dr. Schlabach moved to approve the ordering of agenda. The motion was seconded and carried.

**PUBLIC COMMENT:** Mr. Keeney, VOA, reported that currently 24 states and the American Optometric Association (AOA) post the American Medical Association's (AMA) Current Procedural Terminology (CPT) Codes to their individual websites. He recommended that the Board consider purchasing the right to publish the CPT Codes directly to its website.

**DIRECTOR'S REPORT:** Dr. Cane reported the following:

- The three proposed agency bills were passed in the 2012 Session of the General Assembly which allow the following: the Board of Health Professions to meet annually rather than quarterly; the Prescription Monitoring Program to assist the Federal Bureau of Investigations and Virginia State Police with fraud and doctor shopping cases involving prescription drugs; and the exemption of

licensure for volunteer nurses to practice temporarily in Virginia.

- HB346, HB937 and HB938 were signed by the Governor. The bills relate to the allowance of nurse practitioners to practice as part of patient care teams with oversight by a physician and credentialing and licensure of military service members and their spouses.
- Dr. Carter, Executive Director for the Board of Health Professions, will be developing a report of the military licensure and certification statistics due November 30, 2012.
- HB1106 passed which requires licensure of behavior analysts and assistant behavior analysts.
- The Healthcare Workforce Data Center had conducted a survey of Virginia's physician workforce in collaboration with the professional medical society and the report is posted to the agency's website.

Dr. Cane apprised the Board that Dr. Jackson was no longer serving as a member on the Board of Optometry.

#### **APPROVAL OF MINUTES:**

##### **Revisit July 20, 2011, Minutes**

Ms. Mitchell informed the Board that a vote was taken at the February 8, 2012, meeting striking a paragraph from the July 20, 2011, minutes that had been previously voted upon. She stated that the removal of an item in which a vote had occurred was in violation of the Freedom of Information Act.

Dr. Schlabach moved to remove the stricken paragraph and note from the minutes of the July 20, 2011, meeting. The motion was seconded carried.

Dr. Noble moved to add the paragraph back into the minutes as originally voted on at the July 20, 2011. The motion was seconded and carried.

Dr. Noble moved to approve the February 8, 2012, meeting minutes as presented. The motion was seconded and carried.

#### **LEGISLATIVE/REGULATORY UPDATE:**

##### **2013 Legislative Package**

Ms. Yeatts presented an overview of the need for proposed revisions to the Code of Virginia (Code) chapter related to the practice of Optometry. The Board requested that Ms. Mitchell

provide the board members with a legal definition of the term “fraud.”

Dr. Noble moved to support the draft changes as presented in Chapter 32 of the Code. The motion was seconded and carried.

#### **Petition for Rulemaking**

Ms. Yeatts informed the Board that a petition for rulemaking had been received and sent out for publication. She stated that the public comment had ended and the Board was required to accept or deny the petition and state the reasons if denied.

Dr. Tsai moved to deny the petition because the requirements for informed consent in current regulations are sufficient to protect patients. An adequate eye examination conducted by an optometrist would include an examination for any medical conditions that might exist. The motion was seconded and carried.

#### **REGULATORY/LEGISLATIVE REVIEW COMMITTEE:**

Dr. Noble reported that the Committee had met to review three draft guidance documents: 1) Contact Lens (CL) Fitting; 2) Prescribing for Self and Family; and 3) Advertising Board Certification. He further reported that the Committee voted to recommend the draft guidance document on CL Fitting to the full board for approval. Dr. Noble noted that the Committee took no action on the draft guidance documents for Prescribing for Self and Family and Advertising Board Certification.

Dr. Noble moved to approve the draft CL Fitting guidance document with amendment to include a web-link to the Federal Trade Commission’s website regarding consumer information. The motion was seconded and carried.

#### **DISCUSSION ITEMS:**

#### **Delegation of Authority**

Ms. Knachel provided a brief explanation that a delegation of authority granted by the Board is recorded in the minutes and that the Board has designated the bylaws as the organizational document to consolidate the delegated authorities. She asked the Board to consider amending the previously approved delegated authority to negotiate pre-hearing consent orders, by deleting the word “pre-hearing.” Dr. Noble moved to approve the amended language. The motion was seconded and carried.

#### **Bylaws**

Ms. Knachel reported that the proposed changes to the bylaws had been electronically mailed out on April 9, 2012, and proceeded to discuss the proposed amendments to the bylaws.

Dr. Noble moved to approve proposal number 1, removal of applications for approval of continuing education programs, located in Article III, Section A, number 3. The motion was

seconded and carried.

Dr. Schlabach moved to approve proposal number 2, deletion of delegation of informal fact finding to an agency subordinate, located in Article IV, Section G. The motion was seconded and carried.

Dr. Noble moved to approve proposal number 3, addition of delegated authorities previously approved by the Board to Article IV. The motion was seconded and carried.

Dr. Tsai moved to approve proposal number 4, as amended, negotiation of consent orders, under Article IV. The motion was seconded and carried.

Dr. Schlabach moved to approve proposal number 5, technical amendments/re-lettering, to Article IV. The motion was seconded and carried.

#### **CPT Codes**

The matter of purchasing a license from the AMA for distributing CPT Codes was discussed. Ms. Mitchell advised that the Code defines the practice of optometry and research was needed in the matter of obtaining a license to distribute CPT Codes. Additionally, Ms. Yeatts suggested that the states which utilize CPT codes be researched. Dr. Jellenek directed staff to conduct a survey of the states and directed Ms. Mitchell to conduct the necessary research pertaining to the Board purchasing a distribution license from the AMA. He asked that the information be presented at the next board meeting.

#### **Voting Delegate for Association of Regulatory Boards of Optometry (ARBO) Meeting**

Dr. Noble moved to designate Dr. Schlabach to serve as Virginia's voting delegate at the June 2012 ARBO meeting. Additionally, it was requested that Dr. Schlabach report back on the American Board of Optometry and Accreditation Council on Optometric Education issue of certified continuing education providers.

#### **PRESIDENT'S REPORT:**

Dr. Jellenek noted there was no report to present.

#### **EXECUTIVE DIRECTOR'S REPORT:**

##### **Statistics**

Ms. Knachel informed the Board that the statistics on licensure had been included in the agenda packet. She also noted the inclusion of the progressive history of licensure statistics since the year 2006 as requested at the Board's previous meeting.

##### **CE Audit Results**

Ms. Stamey provided the results of the 2011 CE audit and a

statistical analysis of Virginia licensees' participation in OE Tracker.

**Budget**

Ms. Knachel informed the Board that the budget information had been provided in the agenda packet.

**Disciplinary Case Statistics**

Ms. Knachel provided an update on the disciplinary case statistics.

**Newsletter**

Ms. Knachel reported that the newsletter published in the Spring included a link to the most recently adopted guidance documents.

**Board Member Appreciation**

A plaque was presented by Dr. Reynolds-Cane to Dr. Schlabach in honor of his eight years of service to the Board.

Dr. Schlabach addressed the Board stating that he had enjoyed his years of service on the Board and encouraged the board members to remember the Board's mission to protect the public. Dr. Schlabach further thanked Dr. Cane, board members and staff for their assistance to the Board.

Dr. Jellenek also addressed the Board regarding his service and thanked the board members and staff.

**NEW BUSINESS:**

No new business was presented.

**ADJOURNMENT:**

The board concluded its meeting at 12:50 p.m.

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Gregory P. Jellenek, O.D.  
Chair

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Leslie L. Knachel, M.P.H.  
Executive Director